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THE NATION

Whitman Denies Knowing Mercury Study Was Stalled

Democrats say, as EPA chief, she knew analysis needed to pursue lower industrial emissions had been shelved, and promised to deliver it.

By Alan C. Miller and Tom Hamburger
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WASHINGTON — On her final day as Environmental Protection Agency administrator, Christie Whitman assured members of Congress that the EPA would do required economic and technical studies before proposing a rule to reduce mercury emissions from power plants.

Despite Whitman's assurance, EPA career staffers say this analysis was put off on orders from agency political appointees — and the proposal was written in part by utility interests who strongly supported it.

Whitman said in interviews this week that, if she had known the studies of the mercury proposal were not being done, she would have intervened.

But according to a June 27, 2003, response from Whitman made public Thursday by Rep. Henry A. Waxman (D-Los Angeles), she had been alerted to such concerns and promised four Democratic lawmakers that all necessary analyses would be completed by Dec. 15, 2003.

Waxman was one of the lawmakers who received Whitman's letter after inquiring about reports at the time that the analysis had been shelved.

"Her statements now are indefensible," Waxman said. Whitman, a former New Jersey governor, rejected Waxman's criticism as unfounded. She said it was her expectation that the agency would deliver on its commitments to the lawmakers after she departed.

"It was always my understanding that the full process was being followed," she said in an interview. "I was never given any indication that all the numbers weren't being run."

Waxman's criticism, she suggested, was motivated by partisanship. He should have shown similar concern when the Clinton administration only began the process of regulating mercury emissions from power plants after environmentalists filed suit, Whitman said.

The Bush administration emphasizes that its proposal would be the first to regulate this pollution.

But environmentalists and their congressional allies have attacked the EPA's plan and the process that produced it. Some have urged the administration to scrap the proposal because it violated federal requirements that an agency review alternatives and publish its analysis at the time it makes a major regulatory proposal.

"Everyone told EPA they needed to do their homework in writing these mercury standards," Sen. Patrick J. Leahy (D-Vt.) said in a statement Thursday. "They intentionally did not, and their plan predictably has turned out to be deeply flawed. The mercury rule should be withdrawn and done again the right way, grounded in sound science."

EPA Administrator Michael O. Leavitt, who succeeded Whitman in November, said this week that he has instructed his staff to do additional analysis to help the agency "maximize the level of reductions" based on available technology. The EPA has until mid-December to adopt the final rule. Leavitt characterized the new studies as part of the ongoing process.

Whitman's letter to the lawmakers also pledged to share relevant data with a federal advisory committee helping the EPA develop the rule. But the panel never received the data, apparently because it wasn't produced.

The advisory committee, made up of regulators, environmentalists and industry representatives, was promised comparative data on various alternative proposals that it requested last March. But its next meeting was canceled by the EPA and the group never met again.

"If I had known the administration was committed to getting this data, I would have said, 'We need to make the arrangements to get it and plan the next meeting,' " said John A. Paul, the co-chairman and an Ohio pollution-control official.

Paul, a Republican, said the committee's extensive work was ignored by the EPA in part because its members were suggesting alternatives that ran contrary to the administration's wishes.

The EPA only studied options that would support White House preferences on regulating mercury, agency staffers said.

The EPA's preferred regulatory approach is a market-driven system that the agency initially said would cut mercury emissions from power plants 70% in 15 years. It has since hedged on when it would achieve that goal.

Environmental, health and labor groups maintain that emissions could be reduced by as much as 90% by 2008 through tighter controls under the Clean Air Act. Utilities counter that such a mandate would create financial havoc.

There is growing evidence that mercury which has made its way into the aquatic food chain is a serious health threat, especially to children. A National Research Council study in 2000 found that about 60,000 children a year could suffer learning disabilities from exposure to mercury while in the womb because their mothers ate fish contaminated by the toxin.

Whitman said Thursday that the specific commitments to the lawmakers that accompanied her letter were prepared by Jeffrey R. Holmstead, head of the EPA Office of Air and Radiation, who represented

industry interests on air pollution issues before joining the administration.

EPA employees say it was Holmstead who informed them that the studies were being postponed indefinitely, partly because of "White House concern."

Holmstead was unavailable for comment Thursday.

An EPA spokeswoman said criticism of the mercury proposal was unwarranted. "All the analysis has not been done," said Cynthia Bergman. "And any judgment on the rule and the process should be withheld until the rule becomes final in December."

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